

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSE EVERARDO GONZALEZ,)	Case No. ED CV 12-868-PJW
)	
Plaintiff,)	
)	MEMORANDUM OPINION AND ORDER
v.)	
)	
CAROLYN W. COLVIN,)	
ACTING COMMISSIONER OF THE)	
SOCIAL SECURITY ADMINISTRATION,)	
)	
Defendant.)	

Plaintiff appeals a decision by Defendant Social Security Administration ("the Agency"), denying his claims for Disability Insurance Benefits ("DIB") and Supplemental Security Income ("SSI"). He contends that the Administrative Law Judge ("ALJ") erred when he failed to properly incorporate Plaintiff's testimony into the decision. For the reasons discussed below, the Court agrees and remands the case to the Agency for further proceedings.

Prior to the administrative hearing, Plaintiff submitted a function report in which he reported that it took him 90 minutes to get out of bed in the morning and that he could stand and sit for only 20 minutes at a time. (Administrative Record ("AR") at 180-87.) In interviews with Agency staff, he repeated these claims. (AR 156, 164,

1 173.) At the administrative hearing, he testified that he could walk
2 for only 15 minutes, sit in one position for ten minutes, stand for 15
3 minutes, and some days he could not get out of bed. (AR 31-35.)

4 The ALJ found that Plaintiff was a "generally credible witness."
5 (AR 16.) The ALJ determined, however, that Plaintiff had the residual
6 functional capacity to sit for six hours and to stand and/or walk for
7 four hours. (AR 15.) Obviously, these findings are inconsistent. If
8 Plaintiff can sit, stand, and walk for only 10-15 minutes at a time,
9 he cannot sit for six hours and stand and/or walk for eight hours in a
10 given workday. The ALJ's failure to reconcile these apparent
11 inconsistencies mandates remand.¹

12 Plaintiff's sister also submitted a function report in which she
13 echoed Plaintiff's complaints. (AR 188-95.) The ALJ never addressed
14 that report. That, too, was error. See *Stout v. Comm'r, Soc. Sec.*
15 *Admin.*, 454 F.3d 1050, 1053 (9th Cir. 2006) ("In determining whether a
16 claimant is disabled, an ALJ must consider lay witness testimony
17 concerning a claimant's ability to work."). On remand, he should.

18 Plaintiff asks the Court to remand with instructions to calculate
19 and pay benefits. The Court recognizes it has the power to do so but
20 declines in this instance. It is not clear to the Court that
21 Plaintiff is entitled to benefits. Though he complains that
22 debilitating pain precludes him from working, the doctors who weighed
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27 ¹ The Court recognizes that Plaintiff also claimed at times to
28 be able to walk three to four miles a day. (AR 38-39, 220.) That
apparent contradiction can also be explored on remand.

1 in in this case do not seem to agree. (AR 220-24, 227-33, 255-73.)
2 On remand, the ALJ can resolve the discrepancy.

3 IT IS SO ORDERED.

4 DATED: July 28, 2013.

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8 PATRICK J. WALSH
9 UNITED STATES MAGISTRATE JUDGE
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